IN THE

Supreme Court of the United States

OCTOBER TERM, 1907.

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RICKEY LAND AND CATTLE COMPANY,
Petitioner,
vs.
MILLER & LUX,
Respondent.

No. [illegible]

RESPONDENT'S BRIEF ON MOTION FOR *CERTIORARI.*

W. B. TREADWELL,
For Respondent.

Filed this ..... day of ....., 1907.

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Clerk.

By.....
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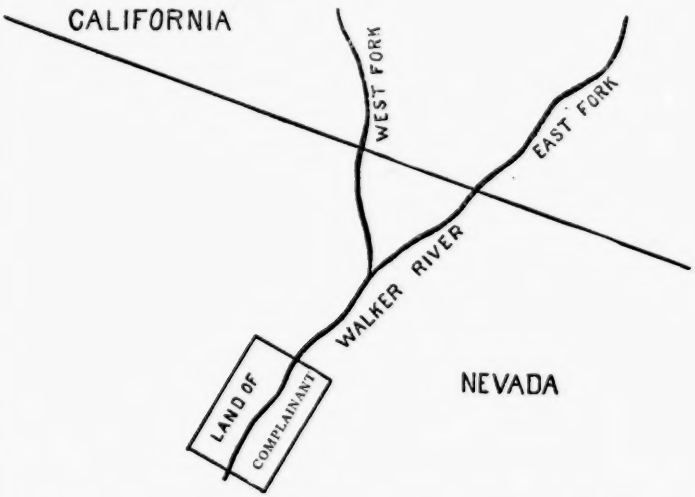
The respondent (appellee in the court below) does not desire to oppose the application of the appellant for a writ of *certiorari;* but, on the contrary, it is solicitous that the writ should be granted, although its reasons for that preference are different from those urged by the petitioner.

The central question upon which depends the decision of the Circuit Court of Appeals, for the review of which a *certiorari* is now sought, is, Whether, given the requisite diversity of citizenship, a Circuit Court of the United States has *jurisdiction* of a bill in equity to enjoin a citizen and resident of the State and District in which the court sits, and who has been personally served with process in that District, from diverting water, in another State, from a river which flows through the latter State and into the former, to the injury of real property situated in the former. The nature of the question and the way in which it arises will be more clearly seen by reference to the following diagram and statement:



Complainant (respondent here) brought a suit in the Circuit Court of the United States for the District

of Nevada, against a number of citizens of Nevada, and, among others, against one Thomas B. Rickey, (petitioner's grantor,) who was a citizen and resident of Nevada, and who was personally served with process in that District. The bill alleged that complainant owned a tract of land in Nevada, (shown on the diagram) and had certain rights to irrigate that land with the water of Walker River, which flows through it, and that the defendant Rickey was wrongfully diverting water from said river, above complainant's land, to the injury of that land and of complainant's rights. The prayer was for an injunction to restrain that diversion. The defendant Rickey put in a plea to the jurisdiction, alleging that his diversions were being made solely in California. The Circuit Court overruled that plea.

Thereupon the petitioner (which was a purchaser *pendente lite* from Rickey) brought two suits in a California State court against complainant and others to have it adjudged that it had the right to make the diversions complained of in the prior suit in the U. S. Circuit Court. The Circuit Court, on the ground of its prior jurisdiction of the controversy, issued an injunction, *pendente lite,* restraining the further prosecution of the suits in the State court. From that order, the appeal here in question was taken, and the Circuit Court of Appeals affirmed the order.

That ruling we confidently believe to be correct; but we also believe that it would be proper for this Court to issue the writ now sought, without stopping

to inquire whether the decision of the Circuit Court of Appeals is correct or not.

The question involved, going, as it does, to the *jurisdiction* of the Circuit Court, will ultimately be subject to review by this Court upon appeal from the final decree when rendered. That question is one of gravity and importance, which is, with increasing frequency, presenting serious difficulties and conflicts of decision in both Federal and State courts, which can not well be removed until there has been an adjudication by this Court.

The decision of the Circuit Court of Appeals was, it is true, on an appeal from an order on an interlocutory application, and not from a final decree, and did not, in terms, dispose of the whole matter. But that decision did *practically* conclude the whole controversy; and the record was such that that court might have done so formally. There is therefore nothing in the condition of the case to create any difficulty in the way of issuing a *certiorari.*

Harriman v. *Northern Securities Co.,* 197 U. S. 244.

Moreover, the granting of the writ is necessary "to prevent extraordinary inconvenience and embarrassment in the conduct of the case," and to avoid "possibilities of conflict and collision,"—which are good reasons for its issuance.

Am. Constr. Co. v. *Jacksonville etc. Co.,* 148 U. S. 372;

Forsyth v. *Hammond,* 166 U. S. 506.

It would seem that where, as here, conflicting suits are pending in courts of rival jurisdictions, of which this Court is the only common arbiter, it would be an unreasonable hardship to compel the parties to proceed, at enormous expense, to litigate their rights in either court, at their peril, when a decision, which this Court is unquestionably now *competent* to render, would avoid that peril, and remove the source of such unseemly conflicts. So far as the question of jurisdiction is concerned, this case is now ripe for a final decision, and the record presents everything necessary to that end.

While, therefore, we entertain no doubt of the correctness of the decision now sought to be reviewed, we submit that it is not necessary, in considering the present application, to enter upon any discussion as to the correctness of that decision. Whatever be the view which might now be taken as to that question, we think that it is one which ought to be determined by this Court in a final and authoritative manner, that is, upon a regular hearing upon the merits. We therefore desire to be understood as not opposing the present application for *certiorari,* but as desirous that that application should be granted.

Respectfully submitted,

W. B. TREADWELL,

For Respondent.